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EXAMINER				
RINES, ROBERT D				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/840,332

**Applicant(s)**

HAMMANN, JERALD A.

**Examiner**

R. David Rines

**Art Unit**

3623

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 May 2009 and 10 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 31-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/02)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

[1] A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10 June 2009 has been entered.

***Notice to Applicant***

[2] This communication is in response to the Amendment After Final Rejection filed 11 May 2009 and the Request for Continued Examination (RCE) filed 10 June 2009. It is noted that this application benefits from United States Provisional Patent Application #60/198,816 filed 21 April 2000. Claims 31-35 have been amended. Claims 31-40 are pending.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

[3] Previous rejection of claims 31-40 under 35 U.S.C. 112, first paragraph, have been overcome by Applicant's amendments to the claims and are hereby withdrawn.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[4] Claims 31-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hailpern et al. (U.S. 6,922,672).

As per (currently amended) claim 31, Hailpern et al. teaches a computer-based method for capacity/demand management in human factor resource industries, comprising:

accepting, via computer, transaction parameter values for resources, wherein each resource has associated therewith at least a service location and at least one of a service date and a service time (See column 2, lines 37-40 and 59-65, column 3, lines 1-5, 22-25 and 50-67, column 4, lines 20-45, wherein parameter values are received from a business regarding a resource, wherein the parameter values represent the promotional or other deal with which a resource is being sold. The resource has associated therewith a service location and a time period for the transaction. See also see column 5, lines 1-6. Hailpern et al. discloses a store, geographic location, and area);

accepting from at least one potential user of resources, via computer, at least one resource transaction parameter value other than the potential user's geographic location (See column 2, lines 27-36, column 3, lines 50-55, column 5, lines 1-6, wherein customer's behavior and information is monitored via the computer system, wherein this information includes profile information, past buying history, etc.);

communicating to the at least one potential user of the at least one resource at least a portion of the transaction parameter values for at least one resource related to the potential user's at least one transaction parameter value (See figure 3, column 2, line 59-column 3, line 10, and column 4, lines 20-25, wherein a promotion with transaction values is communicated to a user);

modifying, in response to the communication at least one of a demand for the at least one resource and a capacity of the at least one resource, wherein when the capacity exceeds the demand for the at least one resource, the modifying includes increasing the demand for and/or

decreasing the capacity of the at least one resource (See column 2, lines 35-45 and 51-65, and column 4, lines 20-45, wherein the communication causes a modification to the demand for the resource. This is done because the capacity and inventory of the resource exceeds the demand by consumers for the resource);

wherein the at least one service date and service time is a date and/or time point or range measure indicating a present or future first date and/or time when the service is available (See column 2, lines 37-40 and 59-65, column 3, lines 1-5, 22-25 and 50-67, column 4, lines 20-45, wherein there is a timeframe from the moment the promotion is communicated to its expiration representing when the product/service is available);

wherein the at least one service availability date and time is related to the availability of at least one service provider resource comprising in part the at least one resource, wherein the at least one service provider resource is a human resource, wherein the at least one service provider resource contributes more than a nominal amount of time producing and/or making available the at least one resource (at least col. 2, lines 37-65 teach providing services, or a service provider resource; col. 2, lines 37-65 teach a business providing services, or the service providers as human resources because a business providing services inherently contains human resources providing the services on some level; and the business contributes more than a nominal amount of time making available the at least one resource);

wherein the communication occurs prior to any first assignment of other concurrently-consumed and/or concurrently-utilized resources to the at least one potential user (See column 3, lines 1-5, wherein the promotion is communicated to the user prior to the use of a concurrent resource, where a product must be purchased with another product);

wherein the capacity of the at least one resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one resource at a first date and/or time plus a measure of an ability to produce and/or make available additional quantities of the at least one resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time (See column 2, lines 35-45 and 51-65, and column 4, lines 20-45, which discusses capacity of a resource (i.e. good/service) at given periods of time. Capacity is the ability to produce, perform, deploy, or to make output, a maximum amount);

wherein the measure of an ability to produce and/or make available additional quantities of the at least one resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time is derived from at least one human factor resource and is not a static ability (See column 2, lines 35-45 and 51-65, and column 4, lines 20-45, which discusses service capacity, wherein service is performed by human resources); and,

wherein the demand for the at least one resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one resource at the first date and/or time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and/or time period (See column 2, lines 37-65, wherein demand is discussed in terms of current (demand is low) and future (moving the item over time in a dynamic environment)).

However, Hailpern et al. does not expressly disclose that the resources are composite resources.

Hailpern et al. discloses communicating with customers when demand is low and there is capacity of a product or service to “move”. Examiner takes official notice that it is old and well

known that products are made up of individual resources that come together to create the overall product and services are made up of individual service pieces that come together to create the overall service. Further, whether the resource is a composite resource or resource does not appear to functionally effect the limitations of the claim. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include composite resources in place of the product/service resources of Hailpern et al. in order to produce the predictable results of selling the composite resource when the demand for such a resource is low (i.e. move the composite resource through communications with customers).

Claim 31 has been amended with respect to the "...date and/or time..." recitation to read "...date/time..." in reference to the accepting of transaction parameter value for composite resources and the associated availability of the service.

As per this element, the designation "...date/time..." is reasonably interpreted to indicate a date designation or a time designation with respect to the associated activity/service availability. As noted in the above rejection of the claims, Hailpern et al. discloses and date designation (Hailpern et al.; column 2, lines 37-40 and columns 59-65, column 3, lines 1-5, 22-25 and 50-67, column 4, lines 20-45 and column 5, lines 1-6).



Claim 32 is substantially similar to claim 31 and has been amended to reflect the amendments to claim 31 and is therefore rejected using the same art and rationale set forth above. Hailpern et al. discloses a system with means in at least figures 1C and 2, and column 3, lines 45-67.

Claim 33 is substantially similar to claim 31 and has been amended to reflect the amendments to claim 31 and is therefore rejected using the same art and rationale set forth above in the rejection of claim 31. Hailpern et al. further teaches a storage device storing a program and a processor connected to the storage device and controlled by the program, the processor operative with the program (column 4, lines 1-17).

Claim 34 is substantially similar to claim 31 and has been amended to reflect the amendments to claim 31 and is therefore rejected using the same art and rationale set forth above in the rejection of claim 31. Hailpern et al. further discloses storing data related to resources (See column 4, lines 1-17). However, Hailpern et al. does not expressly disclose composite resources or constructing internal data structures which link each of the individual resources to associated composite resources and link each of the composite resources to associated individual resources.

Hailpern et al. discloses communicating with customers when demand is low and there is capacity of a product or service to “move”. Hailpern et al. further discloses memory and storing data associated with the system, as well as maintaining inventory and service capacity information concerning resources. Examiner takes official notice that it is old and well known that products are made up of individual resources that come together to create the overall product

and services are made up of individual service pieces that come together to create the overall service. Further, relational databases are old and well known in the art and link stored data that is related together for more efficient storage and access speed. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include composite resources in place of the product/service resources of Hailpern et al. in order to produce the predictable results of selling the composite resource when the demand for such a resource is low (i.e. move the composite resource through communications with customers). Further, it would have been obvious to one of ordinary skill in the art at the time of the invention to include internal data structures that link each of the individual resources to associated composite resources and link each of the composite resources to associated individual resources in order to increase the efficiency of storing and accessing the data by using relational database technology.

Claim 35 is substantially similar to claim 31 and has been amended to reflect the amendments to claim 31 and is therefore rejected using the same art and rationale set forth above in the rejection of claim 31. Hailpern et al. further teaches receiving a responding communication from at least one user binding the at least one resource with specified transaction parameter values (See column 2, line 55-column 3, line 5, wherein the user responds to the promotion and buys a product/service resource).

As per claims 36-40, Hailpern et al. discloses that when demand exceeds the capacity for the at least one resource, the modifying includes decreasing demand for the at least one resource and/or increasing the capacity of the resource (Examiner notes that since Hailpern et al. teaches above that capacity exceeds demand, this limitation does not specifically occur (i.e. is not

required). However, see column 2, lines 37-60, which discloses when demand is high, but there is low capacity/inventory).

However, Hailpern et al. does not expressly disclose that the resources are composite resources.

Hailpern et al. discloses communicating with customers when demand is low and there is capacity of a product or service to “move”. Examiner takes official notice that it is old and well known that products are made up of individual resources that come together to create the overall product and services are made up of individual service pieces that come together to create the overall service. Further, whether the resource is a composite resource or resource does not seem to functionally effect the limitations of the claim. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include composite resources in place of the product/service resources of Hailpern et al. in order to produce the predictable results of selling the composite resource when the demand for such a resource is low (i.e. move the composite resource through communications with customers).

***Response to Arguments***

[5] Applicant's remarks with respect to the Double Patenting rejection have been noted.

[6] Applicant's arguments with regards to Hailpern et al. (U.S. 6,922,672) have been fully considered, but they are not persuasive. In the remarks, Applicant argues that Hailpern et al. does not teach or suggest (1) accepting, via computer, transaction parameter values for composite resources, wherein each composite resource has associated therewith at least a service location and at least one of a service date and a service time, (2) wherein the at least one service date and service time is a date and/or time point or range measure indicating a present or future first date and/or time when the service is available, (3) wherein the capacity of the at least one composite resource is a measure of on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date/time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date/time period beginning at the first date and/or time and ending at a second date/time, (4) wherein the demand for the at least one composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first date/time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date/time period, (5) wherein the at least one service availability date and time is related to the availability of at least one service provider resource comprising in part the at least one composite

resource, the at least one service provider resource is a human resource, and the at least one service provider resource contributes more than a nominal amount of time to producing and/or making available the at least one composite resource, (6) accepting from at least one potential user of composite resources, via computer, at least one composite resource transaction parameter value other than the potential user's geographic location and communicating to the at least one potential user of the at least one composite resource at least a portion of the transaction parameter values for at least one composite resource related to the potential user's at least one transaction parameter value, and (7) as per dependent claims 36-40, wherein, when demand exceeds capacity for the at least one composite resource, the modifying includes decreasing demand for the at least one composite resource and/or increasing the capacity of the at least one composite resource.

In response to argument (1), Examiner respectfully disagrees. Examiner directs Applicant's attention to the claim language as amended. The amended limitation recites "accepting, via computer, transaction parameter values for composite resources, wherein each composite resource has associated therewith at least a service location service date/time". As noted above, under the broadest reasonable interpretation of the claim language as amended, the phrasing date/time is reasonably construed to indicate either a date or a time for the service. Thus, the limitation only requires a service location and either a service date or a service time. Hailpern et al. discloses that parameter values are received from a business, which represent the promotional or other deal information concerning resources. The location of these resources is specified as well as a time for the transaction. See at least column 2, lines 37-40 and columns 59-65, column 3, lines 1-5, 22-25 and 50-67, column 4, lines 20-45 and column 5, lines 1-6. As

to Applicant's comment that the references "now" teaches away from the date/time requirement of the claim, Examiner notes again that the date/time parameter is recited in the alternative and that "now" (which means at this moment or time) is a time parameter. The claim contains no recitation that requires that the date or time must be in the future. In fact, the claim states that the date/time parameter is either present, or "now", **or** in the future. Thus, Hailpern et al. does teach this limitation. Examiner notes that the claims were rejected under 35 USC 103, as Hailpern et al. does not expressly disclose that the resource is a composite resource.

In response to argument (2), Examiner respectfully disagrees. The limitation "wherein the at least one service date and service time is a date/time point or range measure indicating a present or future first date/time when the service is available" again contains alternative language. The limitation requires that the service date or time is a date or time point or range that is at present, in the future, or when the service is available. Hailpern et al. teaches a service time, as discussed above with respect to argument (1).

In response to argument (3), Examiner respectfully disagrees. The limitation "wherein the capacity of the at least one composite resource is a measure of on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and/or time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time" again contains alternative language. The statement "if applicable" sets forth that this wherein clause is not used to modify the limitations of the claims in all claim interpretations. Hailpern teaches a measure of capacity or inventory for a promotion

which has a first and second time (col. 2, lines 35-45 and 51-65, col. 4, lines 20-45 and col. 5, lines 30-37). Additionally, Hailpern et al. teaches purchasing products at a comparatively low wholesale price in col. 2, lines 35-45, or a measure of an ability to produce and/or make available additional quantities. Thus, Hailpern et al. teaches a capacity defined as a measure of on-hand supply or availability at a first time plus a measure of an ability to produce or make available additional quantities of the at least one composite resource over a first time period beginning at the first time and ending at a second time. Hailpern et al. specifically discloses a future time as an expiration time, and thus discloses a time period as claimed.

In response to argument (4), Examiner respectfully disagrees. Examiner again points out that the limitation contains alternative language. Hailpern et al. teaches that demand is the consumption or use of resources over a time frame. See column 2, lines 37-65, wherein demand is discussed in terms of current (demand is low) and future (moving the item over time in a dynamic environment).

In response to argument (5), Examiner respectfully disagrees. Hailpern et al. teaches wherein the at least one service availability date and time is related to the availability of at least one service provider resource comprising in part the at least one composite resource (at least col. 2, lines 37-65 teach providing services, or a service provider resource). Additionally, Hailpern et al. teaches wherein the at least one service providers is a human resource and wherein the at least one service provider resource contributes more than a nominal amount of time to producing and/or making available the at least one composite resource (col. 2, lines 37-65 teach a business providing services, or the service providers as human resources because a business providing services inherently contains human resources providing the services on some level; and the

business contributes more than a nominal amount of time making available the at least one composite resource).

In response to argument (6), Hailpern et al. discloses in column 2, lines 27-36, column 3, lines 50-55, column 5, lines 1-6, that the customer's behavior and information is monitored via the computer system, wherein this information includes profile information, past buying history, etc. Examiner notes that the claim does not recite how these parameters are accepted via the computer (are they actively entered by the user, are they collected passively via the computer system, etc.). Hailpern et al. further discloses in at least figure 3, column 2, line 59-column 3, line 10, and column 4, lines 20-25, that a promotion with transaction values is communicated to a user. Thus, Hailpern et al. does teach and suggest the claim limitations.

In response to argument (7), Examiner respectfully disagrees. Hailpern et al. teaches in column 2, lines 45-51, that when the stock is very low, or the demand exceeds the capacity, encouragement is not desired, meaning decrease the demand. Additionally, in col. 5, lines 16-42, it is taught that since there is a limited capacity or inventory, there is an upper bound on additional customers is can handle at any time and by estimating the current group size and available service capacity levels , the store can select the optimal discount level and a higher discount to attract a larger number of customers than the store can handle will only reduce profit level. Meaning, calculations are made to decrease the demand if the demand exceeds the capacity.



### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 31, 32, 33, 34, 35, and 36-40 are **provisionally** rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7, 12, 17, 22, and 66-70 of copending Application No. 09/999,378. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only modifications between the claims are the intended field of use and a wherein clause concerning the measure of an ability to produce and/or make additional quantities available.

Claim 31 of the current application recites “wherein the measure of an ability to produce and/or make available additional quantities [...] is derived from at least one human factor resource and is not a static ability” which is not recited in claim 1 of the copending application. First, both claims recite “an ability to make available additional quantities”, and thus the fact that the measure is not static is obvious in light of this language because the “ability to make available additional quantities” is a dynamic quality. Therefore, the modification of the current application to include that the ability to make available additional quantities is not static is respectfully considered obvious to one of ordinary skill in the art at the time of the invention. Second, the limitation of the current application “wherein the measure of an ability to produce and/or make available additional quantities [...] is derived from at least one human factor resource” does not include any functional significance as to how or why the composite resource is related to at least one human factor resource. It is well known in the art that many composite resources are associated with a human factor, such as resources being related to human scheduling, calculation, and ability to manufacture, to name a few examples. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include an association between the composite resource and a human factor resource in order to more accurately measure the ability to make available the composite resource by considering all factors associated with this ability, such as human error. Examiner notes that the fact the claimed invention in the human factor resource industry is an intended field of use that has no functional significance on the claim, as currently recited.

Claims 32, 33, 34, and 35 of the current application and claims 7, 12, 17, and 22, respectively, of the copending application have the same, obvious modifications there between as

claims 31 and 1. Therefore, although these conflicting claims are not identical, they are not patentably distinct from each other, as discussed above.

Claims 36-40 of the current application and claims 66-70, respectively, of the copending application are not patentably distinct from each other.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. David Rines whose telephone number is (571)272-5585. The examiner can normally be reached on 8:30am - 5:00pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on 571-272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. David Rines/  
Examiner, Art Unit 3623